

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2306 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MUNDRA METAL INDUSTRIES

Versus

GUJ INDUSTRIAL DEVELOPMENT CORPN

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Appearance:

MR MEHUL S SHAH for Petitioner

MR SM MAZGAONKER for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Perused the special civil application and  
affidavit-in-reply filed by respondents. I do not find  
on the record of this special civil application that

rejoinder to the reply filed by respondents has been filed by petitioner. The petitioner in this special civil application prayed for following reliefs:

- (a) a writ of mandamus or any other writ order or direction may be issued upon the respondents calling upon them to hand over the possession of plot No.5102 and 5103 of Vatwa Industrial Estate of the respondent No.1 allotted to the petitioner by demarcating them and making them approachable and usable and in deliverable condition forthwith.
- (b) an appropriate writ order or direction may in the alternative be issued upon the respondents calling upon them to hand over possession of the plot No.3428 of Vatwa Industrial Estate of the respondents forthwith which was agreed to be given to the petitioner in substitution of plot Nos.5102 and 5103 of Vatwa Industrial Estate of GIDC at the sale price of Rs.100//= per sq.mt. as agreed and without charging any higher price.
- (c) a writ of certiorari or any other writ order or direction may be issued setting aside the impugned order at Annexure O.
- (d) a writ of mandamus or any other writ order or direction may be issued upon the respondents ordering them to refund the amount of Rs.50,000/= which is 25% of the sale price which is of plot of lands of plot nos.5102 and 5103 of Vatwa Industrial Estate of the respondents and Rs.4000/= security deposit amount of the petitioner for the same along with 17% interest p.a. thereon from the date of payment of these amounts to the respondents till its repayment as per the very contract spelt out from annexures A and B.
- (e) an appropriate writ order or direction may be issued upon the respondents restraining them permanently from implementing and enforcing the order at Annexure O.
- (f) an appropriate writ order or direction may be issued upon the respondents calling upon them to desist from disposing of plot Nos.3428 and 5102 and 5103 of the Vatwa Industrial Estate of the respondents so long as the petitioner is not given possession of either plot No.3428 or plot

Nos.5102 and 5103 of the Vatwa Industrial Estate by properly demarcating and putting up in usable and workable condition.

(g) pending the hearing and final disposal of the present petition, the respondents may be restrained from implementation and operating the order at Annexure O and from transferring in any manner plot Nos.3428, 5102 and 5103 in favour of any body else.

#. Plots Nos.5102 and 5103 admeasuring 2200 sq.mts. were allotted to the petitioner, the possession thereof could not be given to it for the reason that those were in low lying area. In view of this fact, the Corporation has acted very fairly and under its order dated 30th June 1983, plot No.3428 admeasuring 2000 sq.mts. was allotted instead of those two plots. However, the petitioner has not taken possession of this new plot and it is taken to be a case where the petitioner abandoned the idea of taking possession of the plot. However, in response to the communication to the petitioner he was informed by the Corporation that he has not paid up price of Rs.2,19,473=80 for the plot No.3428 and this allotment is likely to be cancelled. In spite of the aforesaid communication of the Corporation to the petitioner, the petitioner did not take care to make payment of the amount due in respect of the allotted plot No.3428. The petitioner was informed by the corporation that if it wanted another plot, it would be allotted the same on payment at the rate of Rs.170/= per sq.mt. but the petitioner has not taken any care of the same. So far as the letter of the petitioner dated 29th October 1997 is concerned, the respondent-Corporation has made a statement on oath that the same has not been received. So far as another letter dated 18.1.88 is concerned, the Corporation has replied to the same vide letter dated 6.4.88 and a copy of the same is on the record. The petitioner has not produced any evidence to show that the letter dated 29.10.87 is despatched to the corporation. Be that as it may, the learned counsel for the petitioner contended that the letter dated 30th June 1983 under which new plot No.3428 has been allotted to the petitioner was not received by petitioner. I do not find any substance in this contention. On the contrary, it is a dishonest contention which has been raised by petitioner in this writ petition under Article 226 of the Constitution. The petitioner himself has produced a copy of the letter dated 13th June 1983. There I find that it has been addressed to the petitioner and a copy of the same has been sent to the concerned officer of the Corporation. On being asked by the court, the learned

counsel for the petitioner failed to give out how the petitioner got this copy of the letter. In paragraph-11 of the special civil application, the petitioner stated that, "...the petitioner for the first time came to know about one order dated 30th June 1983 passed by the Senior Officer of the respondents ordering allotment of plot No.3428 admeasuring 2000 sq.mts. instead of (in substitution of) the original allotted plot Nos.5103 and 5102 admeasuring 2000 sq.mts. which has never been communicated to the petitioner though it has been stated below the copy of it that it has to be communicated to the petitioner..." When this copy of this letter is produced along with the writ petition, coupled with the fact that in the reply to the special civil application, the respondents have made a statement on oath that the averments made in para-11 of the special civil application are controverted by them, the only inference which could have been drawn is that this letter has been received by petitioner. The petitioner has not given out how it got this letter. When the letter is coming from the possession of the petitioner and it was addressed to the petitioner, the only inference which follows therefrom is that it was received by petitioner and the petitioner deliberately made a wrong statement of fact before this court. This court, sitting under Article 226 of the Constitution which is extra ordinary equitable jurisdiction, is not there to protect the persons who have not come with clean hands. The very fact that the petitioner despite of receipt of this letter has not cared to take possession of the same and make payment of price thereof which goes to show that it is not interested to take the plot. Moreover, from the subsequent correspondence, I find that the petitioner has been informed of this fact. In this respect reference may have to the letter of the Corporation dated 16th July 1987. It is a different matter that the petitioner denied every aspect of the matter which goes against it but nevertheless when the petitioner has produced this document itself, it cannot be believed. In paragraph-12 of the especial civil application, the petitioner has admitted the fact that it received copy of the letter of the Corporation ex.6 which is dated 16th July 1987. In this letter reference has been made to the letter of the Corporation dated 30th July 1987. In the facts of the case the claim of the petitioner for plot No.5102 and 5103 as well as plot No.3428 cannot be accepted. Similarly, the claim of petitioner for any other plot also cannot be accepted.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. So far as

the prayer of the petitioner as prayed for in paragraph 25(d) of the special civil application is concerned, it is still open to the petitioner to make appropriate representation to the Corporation and in case such a representation is made, the Corporation will consider the same in accordance with law and pass appropriate order. Where the petitioner is still not satisfied with the order passed by the Corporation, it is open to it to approach appropriate redressal forum available in the matter. No order as to costs.

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(sunil)